

31 KAR 4:160. Elections Emergency Contingency Plan.

RELATES TO: KRS 39A.100, 117.045, 117.065, 117.085, 117.165, 117.187, 117.285, Chapter 424

STATUTORY AUTHORITY: KRS 39A.100(1)(k), 117.015(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(b) requires the State Board of Elections to promulgate administrative regulations establishing a procedure for election officials to follow if an election has been suspended or delayed as described in KRS 39A.100(1)(k). This administrative regulation establishes this procedure.

Section 1. Definitions. (1) "Affected county board of elections" means a county board of election that is required to suspend or delay an election pursuant to an executive order issued pursuant to KRS 39A.100(1)(k).

(2) "Affected county clerk" means a county clerk in a county that is required to suspend or delay an election pursuant to an executive order issued pursuant to KRS 39A.100(1)(k).

(3) "Affected election area" means an election area for which a state of emergency has been declared for all or part of an election area as specifically described by the Governor in an executive order issued pursuant to KRS 39A.100(1)(k).

(4) "Elections Emergency Contingency Plan" means the procedures established by this administrative regulation for election officials to follow if an election has been suspended or delayed pursuant to KRS 39A.100(1)(k) through the Governor's executive order.

(5) "Precinct election officer" means an individual who has been appointed to serve as an election officer in a precinct in accordance with the provisions of KRS 117.045.

(6) "Voting place" means a place for voting established in accordance with the provisions of KRS 117.065.

Section 2. General Provisions. (1) Election officials shall follow the Elections Emergency Contingency Plan as specifically mandated by this administrative regulation in accordance with the Governor's executive order, pursuant to KRS 39A.100(1)(k), suspending or delaying an election.

(2) The procedures in the general election laws, KRS Chapters 116 to 121A, shall be applicable to an election conducted pursuant to the Elections Emergency Contingency Plan, unless superseded by:

(a) The Governor's executive order, pursuant to KRS 39A.100(k); or

(b) Provisions of this administrative regulation.

(3) County boards of elections shall establish procedures to implement the provisions of this administrative regulation at the local level and shall file the "County Board of Elections Notice of Establishment of Local Elections Emergency Contingency Plan Procedures" Form SBE 20 on or before the first day of March of each year in which a general election occurs.

(4) County boards of elections shall, in accordance with KRS 117.187, train all precinct election officers prior to each primary and general election on the procedures established by the county boards of elections to implement the Elections Emergency Contingency Plan.

Section 3. Notification. After the Governor has issued an executive order pursuant to KRS 39A.100(1)(k), the State Board of Elections shall notify all county clerks in the affected election area or statewide, in accordance with the Governor's executive order.

Section 4. Voting Places. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county board of elections shall:

- (1) Identify the number of voting places that are functional, that can be repaired, and that have been destroyed; and
- (2) Establish new voting places, if needed, in a manner consistent with KRS 117.065.

Section 5. Precinct Election Officers. If an affected county board of elections determines that new precinct election officers are required because of an emergency, the affected county board of elections shall use the same list of precinct election officers from the suspended election and may create a new list of additional precinct election officers in a manner consistent with the provisions of KRS 117.045.

Section 6. Procedures for Conducting an Election Rescheduled Prior to the Original Election Day. (1) Notification. After notification from the State Board of Elections of an executive order suspending or delaying an election, prior to the original date scheduled for an election by law, the affected county clerk shall ensure that the public receives prompt notification of the suspension or delay of an election in accordance with KRS Chapter 424, if possible, and any other means available.

(2) Absentee voting. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county clerk shall immediately:

- (a) Suspend absentee voting being conducted pursuant to KRS 117.085(1)(c); and
- (b) Secure all voting machines being used for absentee voting until absentee voting may be resumed in accordance with KRS 117.085(1)(c).

(3) Absentee ballots. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county clerk shall immediately deposit all unvoted absentee ballots and related materials in a secured and locked storage container or area until absentee voting may be resumed in accordance with KRS 117.085(1)(c).

(4) Examination of voting equipment.

(a) The date of examination of voting equipment, conducted pursuant to KRS 117.165, which has been previously noticed, but is affected by the suspension or delay of an election, shall be re-noticed pursuant to KRS Chapter 424, if possible, and any other means available.

(b) The affected county board of elections shall not conduct a reexamination of the voting equipment if the affected county board of elections has already conducted the examination required by KRS 117.165 prior to receipt of the notice of the rescheduled election.

Section 7. Procedures for Conducting an Election Rescheduled After the Commencement of the Original Election Day. (1) Notification. After notification from the State Board of Elections of an executive order suspending or delaying an election after the commencement of an election, the affected county clerk shall ensure that the public receives immediate notification of the suspension of the election and the date of the rescheduled election by any means possible, including all electronic media available and notice in accordance with KRS Chapter 424.

(2) Suspend general voting. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county board of elections shall immediately:

- (a) Suspend general voting being conducted on all voting systems;
- (b) Instruct the precinct election officers to secure all voting machines being used for general voting until voting may be resumed in accordance with the executive order issued pursuant to KRS 39A.100(1)(k);
- (c) Instruct the precinct election officers to not closeout or tally the votes in the voting machines. The precinct election officers shall ensure that all seals on the voting machines are intact prior to storage in a secure location;

(d) Instruct the precinct election officers to record the public counter number on the form furnished by the county board of elections. The form shall be signed by all present precinct election officers; and

(e) Instruct the precinct election officers to return all election materials to the county board of elections.

(3) Ballots and election materials. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county clerk shall immediately deposit all election materials, including unvoted absentee ballots, paper ballots, provisional ballots, precinct signature rosters, and related materials, in a secured and locked storage container or area until voting may be resumed in accordance with the executive order issued pursuant to KRS 39A.100(1)(k).

(4) Conduct of rescheduled election.

(a) If the precinct signature roster and voting machines are intact from the original election date, then only those persons duly registered to vote upon the original election date who did not vote on that date shall be entitled to vote on the additional day of voting in that precinct.

(b) If the precinct signature rosters or the voting machines are not intact from the original election date:

1. Any person duly registered to vote upon the original election date, regardless of whether that person voted on the original election date, shall be entitled to vote on the additional day of voting in that precinct;

2. If the signature rosters are destroyed or incomplete and the voting machines are intact, the county board of elections shall use a new set of precinct signature rosters provided by the State Board of Elections, clear the voting machines of all votes, and reset the machines for use in the rescheduled election; and

3. If the voting machines are not intact, the county board of elections shall repair, replace, or acquire new voting machines.

(c) Voting on the rescheduled election day shall be accomplished by physically appearing at the voting place. The time set by law for casting or canvassing a military, absentee, or special presidential ballot shall not be extended by the executive order rescheduling the election. Any absentee, military, or special presidential ballot duly received on the original election date shall be valid.

Section 8. Release and Certification of Election Returns. (1) If a statewide election is affected by the suspension or delay of an election in an affected election area pursuant to KRS 39A.100 (1)(k):

(a) County boards of elections not located in the affected election area that have races affected by the suspension or delay of an election in an affected election area shall:

1. Withhold returns for affected races until the county boards of elections in those counties where an election has been suspended or delayed have conducted rescheduled elections and are able to certify returns to the Secretary of State;

2. Not release any vote totals for the affected races until the suspended election has been completed in the affected counties;

3. Instruct the precinct election officers to not closeout or tally the votes in the voting machines;

4. Instruct the precinct election officers to remove the memory device that stores the vote totals on each voting machine, to secure and seal each voting machine, and to not post the vote totals of the affected races at the precinct as required by KRS 117.285. The precinct election officers shall immediately return all election materials to the county board of elections; and

5. Tally the vote totals from each precinct and only post at the county clerk's office the vote

totals for those races not affected by the suspension or delay pursuant to KRS 39A.100(1)(k).

(b) The State Board of Elections shall notify the county boards of elections not located in the affected election area that have races affected by the suspension or delay of an election in an affected election area if vote totals are to be delayed and when vote totals shall be certified to the Secretary of State.

(2) If a county election, or any part of a county election, is suspended, the vote totals from an affected race shall not be released by the affected county board of elections until after the polls have closed in those precincts with delayed elections.

Section 9. Post-Election Deadlines. All post-election timeframes and deadlines not specifically addressed in the provisions of this administrative regulation that are enumerated in general election laws shall be suspended until the rescheduled election occurs, in accordance with the Governor's executive order, pursuant to KRS 39A.100(1)(k).

Section 10. Incorporation by Reference. (1) "County Board of Elections Notice of Establishment of Local Elections Emergency Contingency Plan Procedures" SBE 20 (December 2005 edition), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (32 Ky.R. 1345; 1609; eff. 3-31-2006; 2056; 33 Ky.R. 27; eff. 7-26-2006; Crt eff. 3-6-2019.)